



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/771,651      | 01/30/2001  | Otto Watzenberger    | 51146               | 8169             |

26474 7590 06/17/2002  
KEIL & WEINKAUF  
1350 CONNECTICUT AVENUE, N.W.  
WASHINGTON, DC 20036

EXAMINER

MANOHARAN, VIRGINIA

ART UNIT

PAPER NUMBER

1764

DATE MAILED: 06/17/2002

5

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                |                     |
|------------------------------|--------------------------------|---------------------|
| <b>Office Action Summary</b> | Application No.                | Applicant(s)        |
|                              | 09/771,651                     | WATZENBERGER ET AL. |
|                              | Examiner<br>Virginia Manoharan | Art Unit<br>1764    |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 March 2002.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-9 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .      6) Other: \_\_\_\_\_ .

Art Unit: 1764

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. Claim 2, for example, is rejected for the same reasons as set forth at page 2, sections e and b, respectively of the previous Office Action. (Since applicants did not address these rejections, it is assumed they are acquiescing therein.).
- b. The term "form" in claim 1, line 2 is a typographical error.
- c. It is unclear as to what happens to "amines" in the stripping process as it is not specified in the claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 & 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Watzenberger et al '107.

Watzenberger is applied for the same reasons as set forth at page 3 of the previous Office action.

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 1764

(Claim 3 appears also to be important to applicants' invention? Compare e.g., with page 2, last paragraph through page 3, lines 1-4 of the specification).

Applicant's arguments filed March 12, 2002 have been fully considered but they are not persuasive. Applicant's following arguments such as:

"Watzenberger discloses a process for working up aqueous solutions containing salts of hydroxylamines with mineral acids. The present invention, on the contrary, relates to working aqueous solutions of hydroxylamines containing amines. The present claims are directed to a process that is novel in view of Watzenberger, and Watzenberger is not suggestive of a process where solutions containing hydroxylamines and amines can be easily worked up by stripping with steam" are not persuasive of patentability for the following reasons:

However, Watzenberger's disclosure at column 4, lines 59-63 of a process of "stripping of the hydroxylamine from the salt solution carried out in the stripping/distillation column . . ." and the further disclosure at column 6, lines 43-52, of ". . .the separation is carried out in a stripping column 14, the solution 4 or 4<sup>1</sup> being introduced at the top of the column . . . steam 10 is passed into the bottom of the column . . .with the solution 4 containing free hydroxylamine and salt....", (column 6, line 32) would at least be suggestive of the argued solutions containing hydroxylamines and amines being worked up by stripping with steam.

The argued "salts "and mineral acids" are not precluded by the claims which is all-inclusive. Obviously, the prior art contemplates doing what the applicants are doing i.e., stripping with steam a hydroxylamine containing solution.

Art Unit: 1764

Absent evidence to the contrary, absolute predictability is not a prerequisite for obviousness. See In re Kronig, 190 USPQ 425, In re Farham, 144 USPQ 746.

Thus, in the absence of anything which may be “new” or “unexpected result”, a *prima facie* case of obviousness has been established by the art and has not been rebutted.

Unexpected results must be established by factual evidence. Mere arguments or conclusory statements in the specification, appellants’ amendments, or the Brief do not suffice. In re Linder, 457 F. 2d 506, 508, 173 USPQ 356, 358 (CCPA (1972)). In re Wood, 582, F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 1764

Any inquiry concerning this communication or earlier communications from the examiner should be directed to V. Manoharan whose telephone number is 703-308-3844. The examiner can normally be reached on Tuesday-Friday from 7:30 A.M. to 6:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Marian Knodel, can be reached on (703) 308-4311. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Manoharan:mv

June 13, 2002

*V. Manoharan*  
VIRGINIA MANOHARAN  
PRIMARY EXAMINER  
ART UNIT 1764  
6/14/02